

PRESIDENT TRUMP ELIMINATES AFFIRMATIVE ACTION FOR FEDERAL CONTRACTORS AND SUBCONTRACTORS – WHAT YOU NEED TO KNOW

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On January 21, 2025, President Trump issued a broad executive order titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," which among other things, rescinded Executive Order ("EO") 11246 – the authority underpinning affirmative action for federal contractors and subcontractors.

What is EO 11246?

EO 11246 was issued by President Lyndon B. Johnson in 1965. Under EO 11246, federal government contractors and subcontractors with at least 50 employees and a federal contract or subcontract of at least \$50,000 were obligated to develop affirmative action programs, perform annual audits of the organization's placement and pay practices, and assess their outreach and recruitment programs for underrepresented members of their workforce.

What Changes for Federal Contractors?

Under President Trump's new executive order, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which had been the government's affirmative action enforcement arm, must "immediately cease" (1) promoting "diversity," (2) holding federal contractors and subcontractors responsible for taking "affirmative action," and (3) "[a]llowing or encouraging [f]ederal contractors and subcontractors to engage in workforce balancing based on race, color,

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sex, sexual preference, religion, or national origin." In addition, all future federal government contracts and grants must include terms by which the contractor or grant recipient certifies it is no longer carrying out DEI initiatives in violation of federal law. The order does not provide more detail on what this certification will entail.

The order revokes EO 11246 in its entirety, including a contractor's or subcontractor's obligation to annually develop and maintain affirmative action plans with respect to race and gender, along with the other requirements mandated by EO 11246—such as self-audits of an organization's placement and pay practices, and certain outreach recruitment obligations. Importantly, the order permits federal contractors to phase out their affirmative action programs over the next 90 days.

Importantly, neither Section 503 of the Rehabilitation Act nor the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), nor their implementing regulations, are affected by President Trump's order. Both statutes create their own affirmative action obligations for federal contractors and subcontractors concerning individuals with disabilities and protected veterans, respectively. However, while neither statute is explicitly mentioned, President Trump's order does prohibit OFCCP from "promoting diversity" or "holding federal contractors and subcontractors responsible for taking 'affirmative action,'" which arguably covers OFCCP's authority to enforce both the Rehabilitation Act and VEVRAA in any meaningful way.

What Changes for All Employers?

Federal contractors and subcontractors: (1) are no longer required to comply with EO 11246 and the OFCCP's affirmative action requirements; and (2) cannot carry out DEI initiatives that violate any applicable federal anti-discrimination laws.

Notably, President Trump's order does not change the various laws prohibiting employment discrimination on the basis of race, color, national origin, religion, gender, gender identity, sexual orientation, pregnancy, disability, and age. However, employers can expect increased federal government scrutiny on DEI programs (including companies having diversity officers and departments) as President Trump revamps the Equal Employment Opportunity Commission (EEOC) and rolls out additional DEI restrictions.